



November 6, 2002

Ms. Patricia E. Carls  
Georgetown City Attorney  
Brown & Carls  
106 East Sixth Street, Suite 550  
Austin, Texas 78701

OR2002-6334

Dear Ms. Carls:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171909.

The City of Georgetown (the "city") received a request for information relating to a named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must first address the city's obligations under section 552.301. Pursuant to section 552.301(b), a governmental body must ask the attorney general for an opinion and state the applicable exceptions not later than the tenth business day after receiving the written request for information. Additionally, pursuant to section 552.301(e), a governmental body that receives an open records request for information that it wishes to withhold under one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld from disclosure, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which part of the documents. The city failed to ask the attorney general for an opinion within ten business days after receiving the request for information. Further, the city failed to timely submit to this office written comments stating the city's reasons for claiming an exception to disclosure, a copy of the written request for information, evidence showing the city's receipt of the request, and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which part of the documents. Thus, the city has not complied with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason sufficient to overcome the section 552.302 presumption of openness exists only where the information is confidential by law or its release implicates third party interests. *See, e.g.*, Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception under the Public Information Act and does not demonstrate a compelling reason to withhold information from the public. *See, e.g.*, Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). We accordingly do not address your section 552.108 assertion. On the other hand, section 552.101 can provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). We will therefore address your arguments under section 552.101.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses confidentiality provisions such as section 58.007 of the Family Code.

You assert that some of the submitted information is excepted under this section. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Some of the submitted information involves juvenile conduct that occurred after September 1, 1997. Incident report numbers 25948 and 29531 concern conduct which is within the scope of section 58.007. It does not appear that any of the exceptions in section 58.007 apply; therefore, incident report numbers 25948 and 29531 are confidential pursuant to section 58.007(c) of the Family Code. You must withhold this information from disclosure under section 552.101 of the Government Code.

We note that some of the submitted information is subject to section 261.201 of the Family Code. This section reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We find that incident report number 8576 consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, incident report number 8576 is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).* Accordingly, this offense report is excepted from required public disclosure based on section 552.101 of the Government Code.

We next note that where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning a certain person. Accordingly, we believe that the named individual's right to privacy has been implicated. Thus, to the extent that the named individual may be a possible suspect, defendant, or arrestee, we conclude that you must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.*

In summary, you must withhold incident report numbers 25948 and 29531 from disclosure based on section 552.101 in conjunction with section 58.007 of the Family Code. You must also withhold incident report number 8576 from disclosure based on section 261.201 of the

Family Code. Finally, you must withhold the submitted information from disclosure under section 552.101 in conjunction with common-law privacy to the extent that the individual named in the request is listed as a possible suspect, defendant, or arrestee. We have marked the information accordingly. Because we base our ruling on the previous exceptions, we need not address your argument under section 552.101 in conjunction with constitutional or common-law privacy.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 171909

Enc: Submitted documents

c: Mr. Gene Brenner  
306 West Sequoia Spur  
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(w/o enclosures)